HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

(DIVISION BENCH)

CORAM ; HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA,J.

WRIT PETITION NO. 388 OF 2002

Ch. Narayana Rao

Vs.

Union of India and others

Present :

For the Petitioner : Shri Prashant Mishra, Sr. Advocate with Shri V. R. Tiwari, Advocate

For the Respondents: Shri Bhishma Kinger, Advocate

ORAL ORDER

(Passed on 19th Februrary, 2007)

The following oral order of the Court was passed by **H.L. Dattu, C.J.** –

The petitioner is presently working as Stenographer in the office of Additional Commissioner of Income Tax, Bilaspur. He calls in question the correctness or otherwise of the order passed by the Central Administrative Tribunal, Principal Bench, Delhi, in OA.No. 413 of 1999 dated 02.07.2001. By the impugned order, the Tribunal has rejected the relief sought for by the petitioner in the application filed by him.

2. The petitioner was appointed as Stenographer on ad-hoc basis by a letter of appointment issued by the respondent dated 26.11.1981. The letter of appointment reads as under :

> " Shri Ch. Narayana Rao is hereby informed that he has been absorbed for officiating appointment in a temporary vacancy of stenographer (OG) in scale of

Rs.330-10-380-EB-12-560 plus allowances as may be sanctioned by the Government of India from time to time. The conditions of appointment are detailed below. If he accepts the offer on these conditions he should report himself for duty to the office of I.T. Office, Asst. I, Raipur on or before 10.12.81. If he fails to do so he should consider this offer as cancelled. No traveling or other allowance will be paid to him for obtaining the medical or other certificates for joining the posts.

CONDITIONS OF SERVICE

His appointment is purely on a ad-hoc and temporary basis and his services may be terminated at any time without assigning any reasons."

3. The other conditions of service are not necessary to be extracted for the purpose of disposal of this petition.

4. The petitioner had filed an application before the Central Administrative Tribunal inter alia requesting the Tribunal to direct the respondents to count the service rendered by him from the date of his initial appointment till the date of regularization of service for the purpose of determining his seniority. The Tribunal following the dicta laid down by the Apex Court in the case of ***Direct Recruit Class II Engineering Officer's Association Vs. State of Maharashtra and others*** reported in **(1990)2 SCC 715**, and has come to the conclusion that the petitioner/applicant is not entitled to any relief sought for in the application. That is how the petitioner is before us in this writ petition.

5. In order to answer the contentions canvassed by Mr. Prashant Mishra, learned Sr. counsel for the petitioner, the facts pleaded in the application requires to be noticed. They are as under :

The petitioner was appointed as Stenographer on ad-hoc/temporary basis on 26.11.1981. His selection to the said post was

not made by the Staff Selection Commission, which is one of the requirements under the rules. When there was a threat of termination of his service, he approached the Administrative Tribunal by filing application **O.A.NO.248** of **87**. The Tribunal while allowing the application, directed the petitioner/applicant to appear before the Staff Selection Commission for the purpose of the selection process. Pursuant to the directions so issued by the Tribunal the applicant/petitioner appeared and cleared the examination on 7th April 1992. It is only thereafter that the respondents have regularized the services of the petitioner on 21.06.1993. Since the petitioner was not given other service benefits such as seniority etc. from the date of initial appointment till the date of regularization of his service, the petitioner had approached the Tribunal by filing O.A. No.413 of 1999. In the said application, the petitioner had requested the respondents to treat the period between the date of his initial appointment till the date of regularization of his service to be counted for the purpose of seniority. The Tribunal has rejected the request of the petitioner.

6. Shri Prashant Mishra, learned counsel appearing for the petitioner would contend before us, that the Tribunal was not justified in relying upon the corollary to Clause (A) of the order while coming to the conclusion that the applicant is not entitled to the relief requested in his application. According to him, the Tribunal should have taken into consideration Clause (B) of the operative portion of the order passed by the Supreme Court in the case of ***Direct Recruit*** (supra) and should have granted relief to the petitioner.

7. Per contra, learned counsel appearing for the respondents would justify the orders passed by the Tribunal.

8. Supreme Court in ***Direct Recruit*** (supra) case while summing up the judgment, has issued following guidelines for the purpose of counting the seniority of a person who is appointed initially on ad-hoc basis but not following the procedure prescribed. The two clauses in the said judgment requires to be noticed by us. They are :

> "(A) Once an incumbent is appointed in a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appoint is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
>
> (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted."

9. The other clauses in the judgment are not necessary for the purpose of disposal of this case and, therefore, they are not extracted.

10. Analysis of the observations made by the Apex Court in Clauses (A) & (B) in our view is as under :

The first part of Clause (A) envisages that if an appointment of a person is made to a post according to the Rules, his seniority requires to be counted from the date of his initial appointment and not according to the date of his confirmation. The corollary of the above rule is that, if the initial appointment is only ad-hoc and not according to the rules and only made as a stop-gap arrangement, the officiation in such post cannot be

taken into account for considering the seniority. That only means if the initial appointment itself is an ad-hoc appointment and if the said appoint is not made according to the rules and made only as a stop-gap arrangement, then his initial appointment till the date of regularization cannot be counted for the purpose of seniority.

11. Clause (B) of the judgment, if it is read in the proper perspective, only says that, if the initial appointment is only ad-hoc and not made according to the rules, the officiation in such post cannot be taken into account for considering the seniority. Keeping in view the aforesaid observations made by the Apex Court in ***Direct Recruit*** (supra), let us go back to the facts in the present case.

12. Admittedly, the petitioner was appointed on 26.11.1981 purely on ad-hoc basis and not according to rules in the sense that his selection was not done by the Staff Selection Commission, which is the primary requirement under the rules. In fact, the petitioner apprehending that he may be terminated from the service since his appointment was irregular, had approached the Tribunal by filing an application O.A.No.248 of 1987. The Tribunal while disposing of the application had directed the applicant namely, the petitioner to appear before the Staff Selection Commission, that only means that the appoint made by the respondents initially was not in accordance with rules. The petitioner did appear before the Staff Selection Commission on 7th April, 1992 and he was selected by the Staff Selection Commission process and thereafter his service came to be regularized on 21.06.1993. These facts would clearly demonstrate that the petitioner was appointed on ad-hoc basis and again not in accordance with the rules framed and therefore, in our opinion, the Tribunal has rightly taken into consideration the corollary of Clause (A) of the judgment and

has negatived the request of the petitioner for counting his service from the date of initial appointment till the date of regularization, while fixing his seniority in the cadre of Stenographer (O.G.).

13. In our view, the Tribunal has not committed any error whatsoever in understanding the observation made by the Apex Court. Therefore, no interference in the said order is called for. Accordingly, the petition is rejected. In the facts and circumstances of the case, parties are directed to bear their respective costs. Ordered accordingly

Sd/-
Chief Justice

Sd//-
V.K.Shrivastava
Judge